

STATE OF MICHIGAN  
COURT OF APPEALS

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HASEM SALEM,

Plaintiff-Appellant,

v

SALEH SALEH,

Defendant-Appellee.

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UNPUBLISHED

October 14, 2014

No. 316464

Wayne Circuit Court

LC No. 11-012076-NI

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

OWENS, P.J. (*dissenting*).

I respectfully dissent from the majority opinion and would affirm the trial court's order granting defendant's motion for summary disposition.

While the question whether a particular defendant acted reasonably when faced with a sudden emergency may be a question of fact for the jury, where a defendant moves for summary disposition pursuant to MCR 2.116(C)(10), this is only true where there is a genuine issue of material fact. See, e.g., *White v Taylor Distributing Co, Inc*, 482 Mich 136, 143, 140-141; 753 NW2d 591 (2008). In this case, even when viewing the evidence in the light most favorable to plaintiff, the nonmoving party, *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012), I would conclude that there was no genuine issue of material fact whether defendant acted reasonably under the circumstances of the particular sudden emergency. After he learned decedent had been shot, defendant found his passenger "in danger," and was required to act in the chaotic moments that ensued—with the encouragement of his companions, including plaintiff—without time to consider what, in hindsight, might have been better means to avoid the impending danger. The evidence supported a finding that defendant acted reasonably when confronted with a sudden emergency. Therefore, I would conclude that the trial court correctly applied the sudden-emergency doctrine to grant defendant summary disposition.

/s/ Donald S. Owens